

Directive

APHIS 5600.3

9/3/99

EVALUATING APHIS PROGRAMS AND ACTIVITIES FOR ENSURING PROTECTION
OF CHILDREN FROM ENVIRONMENTAL HEALTH RISKS AND SAFETY RISKS

1. PURPOSE

This Directive:

- a. States APHIS policy concerning compliance with Executive Order 13045 , Protection of Children From Environmental Health Risks and Safety Risks (Attachment 1), and
- b. Includes guidance (Attachment 2) to help APHIS officials comply with the executive order, including how to evaluate for compliance with the executive order.

2. AUTHORITIES

The following authorities related to Executive Order 13045 require Federal agencies to evaluate potential environmental health risks and safety risks of their programs and activities:

- a. National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*);
- b. APHIS' NEPA Implementing Procedures (7 CFR 372);
- c. Executive Order 12866, Regulatory Planning and Review;
- d. Executive Order 12114, Environmental Effects Abroad of Major Federal Actions; and
- e. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

These authorities are described in Attachment 2.

3. DEFINITIONS

- a. Covered regulatory action. Any substantive action in a rulemaking that is likely to result in a rule that may:
 - (1) Be “economically significant” under Executive Order 12866 (a rulemaking that has an annual effect on the economy of \$100 million or more or would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities); and
 - (2) Concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children.
- b. Environmental health risks and safety risks. Risks to health or to safety that are attributable to products or substances that a child is likely to come in contact with or ingest (such as the air we breathe, the food we eat, the water we drink or use for recreation, the soil we live on, and the products we use or are exposed to).

4. POLICY

It is APHIS policy that its officials, when planning or implementing all APHIS programs or activities, will carefully consider the potential for disproportionate health risks and safety risks to children. Such considerations must be made for every APHIS action and are independent from considerations made in compliance with other environmental statutes, regulations, and executive orders.

5. RESPONSIBILITIES

- a. The Administrator will ensure that APHIS officials are aware of and comply with the requirements of Executive Order 13045.
- b. APHIS officials who are responsible for planning or implementing an APHIS program or activity, including a proposed rulemaking, will:
 - (1) Identify and assess environmental health risks and safety risks that may disproportionately affect children. APHIS officials will ensure these risks are evaluated and considered. This may be achieved in the context of their environmental documentation, if required, for the program or activity, in compliance with NEPA, APHIS’ NEPA Implementing Procedures, and other related authorities. Each APHIS official will generate his/her own internal strategy for compliance with the executive order and will implement these strategies concurrent with regular program activities. These activities should not constitute a new administrative burden or require significant additional program resources.

- (2) When a rulemaking meets the definition of a covered regulatory action, provide through the Regulatory Analysis and Development (RAD) staff, Policy and Program Development (PPD), to the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) for each covered regulatory action: (i) an evaluation of the environmental health or safety effects of the planned regulation on children; and (ii) an explanation of why the planned regulation minimizes or avoids health and safety risks to children relative to other potentially effective and reasonably feasible alternatives considered by the Agency.
 - (3) Implement mechanisms to identify and describe the key data needs related to environmental health risks and safety risks to children that have arisen in the course of the Agency's programs and activities and report this information, when requested, to meet the Department obligations as required in § 3–305 of the executive order.
- c. RAD, PPD, will coordinate activities required by § 5–501 of Executive Order 13045 for each covered regulatory action sent to OIRA.
 - d. Environmental Analysis and Documentation (EAD), PPD, will provide advice, guidance, and other assistance, when requested, to APHIS officials to help them comply with the requirements of the executive order.

4. INQUIRIES

Direct inquiries concerning policy and compliance relating to this Directive to the Deputy Director, EAD, PPD, at 301–734–8565.

This Directive is available at www.aphis.usda.gov/library.

Craig A. Reed
Administrator

2 Attachments

GUIDANCE FOR COMPLYING WITH EXECUTIVE ORDER 13045, PROTECTION OF CHILDREN FROM ENVIRONMENTAL HEALTH RISKS AND SAFETY RISKS

What types of APHIS programs and activities must comply with this executive order?

Examples of APHIS programs and activities where evaluation of environmental health risks and safety risks to children would be consistent with the intent of the order include, but are not limited to:

- a. Pesticide applications,
- b. Pest eradication programs,
- c. Quarantine facilities placement,
- d. Wildlife management activities, and
- e. Rulemaking.

When do I evaluate an APHIS program or activity for compliance with the executive order?

APHIS officials should evaluate the potential disproportionate environmental health risks and safety risks to children during the planning of APHIS programs and activities. APHIS officials should not consider this evaluation as a separate activity or an activity requiring the commitment of significant additional program resources. Each APHIS manager is responsible for generating his or her own internal strategy for compliance with the executive order when planning an APHIS program or action that could have the potential for environmental health effects.

When possible and appropriate, the APHIS official should conduct the evaluation as part of the program's National Environmental Policy Act (NEPA) documentation. In particular, Executive Order 13045 can be addressed concurrently with related executive orders and during the analysis of potential environmental impacts of the program or activity. This generally would be addressed when preparing a rulemaking, planning a program or activity, or preparing NEPA documentation relating to the rulemaking, program, or an action plan.¹ The NEPA process includes a determination that a Federal action (program or activity) is categorically excluded from NEPA or that an analysis of the potential environmental impacts of the program or activity is required. The analysis will result in the preparation of an environmental assessment and a finding of no significant impact or an environmental impact statement and a record of decision.

Where and how do I address the evaluation of environmental health risks and safety risks?

¹ Regulatory Analysis and Development, Policy and Program Development, coordinates activities required by § 5 of Executive Order 13045.

You can address the evaluation in a NEPA document, such as an environmental assessment, or in a planning document for the program or activity. If the program or activity is categorically excluded by the APHIS NEPA Implementing Regulations (7 CFR 372), you can address the evaluation in a memorandum to the file along with your consideration of the program or activity for NEPA purposes.

The following examples show how to address risks to children from an agency program or activity. The language can be used when documenting the evaluation, such as in a NEPA-related document or a planning document. Each of the three examples represents a typical evaluation of programs and activities for compliance with provisions of particular executive orders or NEPA. Discussion about the evaluation of the risks and the rationale supporting the determination can be addressed in a section of the document under the title “Compliance with Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks.”

Example 1. Evaluation reveals no potential for impact to children from the proposed action (program or activity).

Language: “After careful analysis, [insert program or agency name] has determined that [insert the proposed action] has no potential for causing disproportionate environmental health risks or safety risks to children.”

[A discussion about the rationale in support of this determination follows here. Unless unusually complicated, one or two paragraphs should be sufficient.]

Example 2. Evaluation reveals that while there is potential for impact to children from the proposed action (program or activity), the potential impact would not be disproportionate.

Language: “After careful analysis, [insert program or agency name] has determined that while [insert the proposed action] has some potential for causing environmental health risks and safety risks to children, evaluation reveals that any potential impacts would not disproportionately affect children.”

Follow this language with a discussion about the rationale in support of this determination. The analysis in the document needs to identify potential impacts and why these impacts would not disproportionately affect children. Analysts should consider that “disproportionately” under the executive order addresses any particular or unusual vulnerability of children to those impacts.

Example 3. Evaluation reveals that the proposed action (program or activity) has potential for disproportionate impacts to children; however, the existing program (or activity) provisions [operational procedures] [and/or mitigation measures] are adequate to avoid or reduce the impacts.

Language: “After careful analysis, [insert program or agency name] has determined that [the proposed action] has potential for causing environmental health risks and safety risks that may disproportionately affect children; however, evaluation reveals that [operational procedures] [and/or] [mitigation measures] will avoid or reduce any potential impacts to acceptable levels.”

Document as in example 2, but with added analysis of how existing program or activity operational procedures and/or specific mitigation measures will address each area of potential impacts identified in the analysis and how they avoid or reduce the disproportionate impact to children.

How does compliance with Executive Order 13045 apply to cooperative programs?

Federal agencies participating in cooperative programs are responsible for ensuring that the entire program’s actions and activities—not just the Federal agency’s role in the program—are in compliance with the executive order. State agencies or other entities may be responsible for program implementation and, in fact, may provide information showing that the program’s actions and activities meet the conditions set by the Federal agency to comply with the executive order; however, the Federal agency involved in a cooperative program bears the ultimate responsibility for ensuring compliance with the executive order.

How do I collect data and meet the reporting requirements for this executive order?

Section 3-305 of Executive Order 13045 states in part that,

“The Task Force shall prepare a biennial report on research, data, or other information that would enhance our ability to understand, analyze, and respond to environmental health risks and safety risks to children. For purposes of this report, cabinet agencies and other agencies identified by the Task Force shall identify and specifically describe for the Task Force key data needs related to environmental health risks and safety risks to children that have arisen in the course of the agency’s programs and activities. The Task Force shall incorporate agency submissions into its report and ensure that this report is publicly available and widely disseminated. . . .”

In response to the data collection and reporting obligations in § 3–305, APHIS officials conducting evaluations to comply with the executive order should implement mechanisms that will allow them to capture and share data necessary to help APHIS support the Department’s obligations in this area. The Task Force (set up to oversee implementation of the executive order) has not yet identified to agencies the key data needs required for their biennial reports.

APHIS officials should also realize that a related executive order, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, may require similar data collection, analysis, and reporting of environmental and human health risks on populations. Thus, when the key data elements are known, reducing

duplication of effort and maximizing efficient use of resources would be prudent for coordinating related data collection and reporting efforts within and across program areas.

AUTHORITIES RELATED TO EXECUTIVE ORDER 13045

When evaluating the potential for disproportionate health risks and safety risks to children (Executive Order 13045), some statutes, regulations, or other executive orders also may relate to the community under consideration. For example, in the United States, 20.8 percent of children live in poverty, while the figure for adults is 11.3 percent. Thus, when considering impacts to minority populations and low-income populations under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, one can reasonably expect that children will be included in that evaluation. Federal agencies must consider and document the potential impacts of their actions on human health, according to some executive orders and particularly within the context of the National Environmental Policy Act (NEPA). However, either of the executive orders can be triggered by a proposed action that is categorically excluded under NEPA; therefore, consideration of Executive 13045 is required regardless of the need to prepare a NEPA document. The following list provides the related authorities that are most commonly used to evaluate environmental health risks and safety risks.

List of Related Authorities Requiring Evaluation of Environmental Health Risks and Safety Risks

Federal Statute/Regulation	Description
National Environmental Policy Act (NEPA), as amended (16 U.S.C. 4321 <i>et seq.</i>)	Under NEPA, Federal actions may not violate any existing Federal, State, tribal, or local statutes, treaties, or international agreements. Executive orders are included and are to be implemented to the extent reasonable and possible within the NEPA process. The Council on Environmental Quality (CEQ) and the U.S. Environmental Protection Agency, which exercise NEPA oversight authority, have issued guidance concerning implementing particular executive orders under NEPA and are responsible for assuring NEPA compliance, including compliance with executive orders concerning human health and the environment.
APHIS NEPA Implementing Procedures (7 CFR 372)	These procedures implement section 102(2) of NEPA by assuring early and adequate consideration of environmental factors in APHIS planning and decisionmaking and by promoting the effective, efficient integration of all relevant environmental requirements under NEPA. These procedures identify classifications of actions (i.e., programs and activities) normally requiring environmental impact statements and environmental assessments and identify categorically excluded actions.
Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations	To the greatest extent practicable and permitted by law and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by

Federal Statute/Regulation	Description
North American Agreement on Labor Cooperation Between The Government of Canada, The Government of the United Mexican States, and The Government of the United States of America	<p>identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.</p> <p>This is the labor-related codicil to the North American Free Trade Agreement (NAPHTHA) in which Canada, Mexico, and the United States agree to some protections and policies regarding labor, including</p> <p><u>Labor protections for children and young persons :</u></p> <p>The establishment of restrictions on the employment of children and young persons that may vary taking into consideration relevant factors likely to jeopardize the full physical, mental, and moral development of young persons, including schooling and safety requirements.</p>
Executive Order 12114, Environmental Effects Abroad of Major Federal Actions	<p>Furtheres the purpose of the National Environmental Policy Act, the Marine Protection Research and Sanctuaries Act, and the Deepwater Port Act consistent with the foreign policy and national security policy of the United States. Represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.</p>
Executive Order 12866, Regulatory Planning and Review (as stated in Executive Order 13045)	<p>For each covered regulatory action submitted to Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) for review pursuant to Executive Order 12866, the issuing agency shall provide to OIRA the following information developed as part of the agency's decisionmaking process, unless prohibited by law:</p> <ul style="list-style-type: none"> (a) an evaluation of the environmental health or safety effects of the planned regulation on children; and (b) an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

INTERNET SOURCES RELATED TO CHILDREN'S ENVIRONMENTAL HEALTH RISKS AND SAFETY RISKS

For more information about environmental health and safety concerns, the following list of Internet addresses is offered.

Agency Responsibility	Internet Address	Summary
1. Protecting Children From Environmental Health Risks and Safety Risks	www.niehs.nih.gov/oc/factsheets/fskids.htm	Factsheet of general environmental health risks facing children.
	www.cehn.org/index.html	Children's Environmental Health Network homepage; provides excellent links to related topics.
	www.essential.org/cchw/campaign/cehp.html	Overview of the children's environmental health project; includes topics such as evidence of exposure, why risks are serious, and prevention.
	www.rhpp.vt.edu/modules/dawn/	Slideshow presentation on children's environmental health risks; also provides related links.
	www4.nationalacademies.org/cb/sse/bocyfweb.nsf www.ilsa.org/rsireport.html , books.nap.edu/catalog/2126.html	General references on human health, including some related to children's health and safety.
2. Environmental Justice	www-personal.umich.edu/~jrajzer/nre/index.html	Complete comprehensive definition of environmental justice; provides a link to "Environmental Justice Definitions," which lists and defines key terms.
	www.whitehouse.gov/CEQ/	The President's Council on Environmental Quality home page; provides links to NEPA information and guidance.
3. General Environmental Health Risks	www.niehs.nih.gov/external/faq/alpha.htm	Alphabetized listing of health topics.
	www.epa.gov/reg5oair/tristate/riskasse.htm	Defines "environmental health risks" and "risk assessment," and provides general information about risk assessment.
4. Executive Order 13045	www.epa.gov/fedrgstr/EPA-PEST/1997/April/Day-23/p10695.htm	Executive Order 13045 text